the word "grenade" in a number of standard works. For instance in the Encyclopaedia Britannica "grenade" is defined as follows :—

> A small spherical explosive vessel thrown by hand. Hand grenades were used in war in the 16th century....

In the pocket Oxford dictionary the same word is defined as "an explosive shell thrown by hand".

From these definitions Mr. Shearn argued that a hand grenade must be explosive and that in this case the two hand grenades could not be explosive until they were fitted with fuses and that when found by the police in the bag carried by the appellant they were not so fitted.

We are unable to accept this argument, because there is no doubt that what the appellant was carrying was two grenade parts and two fuses which make up two complete hand grenades. It would have taken very little time to fit the fuses into the grenade parts. To decide otherwise would mean that a person could carry the grenade parts and the fuses separately with impunity, because he could wait until the very last minute before he wished to use them before fitting the fuses. Accordingly the evidence at the trial disclosed that the articles carried by the appellant were hand grenades.

This disposes of all the questions we were required to consider and answer. In the result this appeal is dismissed.

Appeal Dismissed.

PUBLIC PROSECUTOR v. SAYER.

[Orig. Crim. Juris. (Spenser Wilkinson, J.) June 20, 1947]

Penal Code, Section 71 — Offence made up of many parts — Causing the death of more than one person in one and the same accident — Penal Code Section 304A.

In this case the accused was charged with six separate charges each of which alleged that he caused the death of a named person at 8.30 p.m. on the 26th December 1946 at Batu Road, Kuala Lumpur by doing a rash act not amounting to culpable homicide, to wit, by driving a motor lorry No. B.A. 486330 rashly. The particulars of rashness given in each charge were word for word the same, and the only difference between each of the charges was in the name of the person whose death was alleged to have been caused.

Held, (1) that where a person is driving a motor vehicle rashly, and in so doing simultaneously knocks down several persons thereby causing the death of more than one of them, then there is only one offence and it would be proper to frame one charge to the effect that the accused caused the death of A, B, C, etc. by a rash act and was thereby punishable under Section 304 A of the Penal Code; (2) that where several deaths are caused not simultaneously but one very soon after another the test to be applied in order to determine in such cases whether one or more offences have been committed is to ask the question "Have all these deaths been caused in one and the same accident?" using these words not in any technical but in their ordinary everyday sense.

Cases referred to :—

(1) *Cartro v. The Queen,* 6 A.C. 229.

(2) *Andrews v. Director of Public Prosecutions* (1937) A.C. 576.

(3) *Emperor v. Bali Ram Nayappa.*

(4) *R. v. Trainer,* 4 F. and F. 105.

(5) *R. v. Beng,* 4 F. and F. 504.

CRIMINAL TRIAL.

E. N. Griffith Jones and A. J. Grattan Bellew for the Public Prosecutor.

P. J. D. Regester for the Accused.

Spenser-Wilkinson, J. : — At the outset of this case Counsel for the defence submitted that the accused had been guilty of only one offence and should therefore be charged and punished upon one charge only. After hearing arguments on this submission I gave an oral ruling to the following effect :—

> "In this case the accused is charged with six separate charges, each of which alleges that he caused the death of a named person at 8.30 p.m. on the 26th December, 1946, at Batu Road by doing a rash act not amounting to culpable homicide, to wit, by driving a motor lorry No. BA486330 rashly. The particulars of rashness given in each charge are word for word the same, and in fact the only difference between each of these charges is in the name of the person whose death is alleged to have been caused.
>
> "I have been asked to give a ruling as to whether a case of this kind falls within the provisions of the first paragraph of section 71 of the Penal Code so as to render the accused liable to punishment for only one of the offences charged. I have come to the conclusion that where a person is driving a motor vehicle rashly, and in so doing simultaneously knocks down several persons thereby causing the death of more than one of them, then, in my opinion, there is only one offence, and it seems to me that it would be proper in such a case to frame one charge to the effect that the accused caused the death of A, B, C, etc. by a rash act and was thereby punishable under section 304A of the Penal Code.

"Where several deaths are caused *not* simultaneously but one very soon after the other, the question becomes more complex. For example, if a man driving a motor vehicle rashly knocks down a pedestrian but does not stop and some distance further along the same road whilst still driving rashly knocks down a second person, it seems to me that the events would be sufficiently removed both in time, place and state of mind from each other to constitute separate offences. Where, on the other hand, such person knocks a man down in one place and then immediately after collides with another and both the injured persons die, this would probably be only one offence.

"I think this is really a question of fact and it seems to me that the best test which can be applied in order to determine in such cases whether one or more offences have been committed is to ask the question "Have all these deaths been caused in one and the same accident?" using these words not in any technical but in their ordinary every-day sense.

"Since reaching the above conclusion, I have read the depositions in the case now before me, and whilst it is clearly impossible for me to form any conclusion on questions of fact until the evidence has been adduced, it seems to me that if the facts as they appear in the depositions were duly proved, then *prima facie* the various deaths charged in these six charges could be reasonably said to have been caused in one and the same accident and were the result of one act.

"Without pronouncing any decision in regard to the form of the charges or their joinder in one trial, I can safely say at this stage that unless the prosecution can show circumstances which indicate the conclusion of one act and the commencement of a new act between the first of the deaths and one or more of the others, then, even if convicted, the accused in this case would be liable only to one punishment in respect of one charge under section 304A of the Penal Code".

Thereafter, the prosecution made an application that the accused should be tried at once trial upon three of the original six charges and that his trial upon the other three charges be adjourned. It was alleged by the prosecution that the evidence which would be adduced would prove separate acts of the accused upon which separate charges could properly, in the light of my ruling, be laid. As I had held that the question whether, in any particular case, there was one act of rashness or more was a question of fact I felt I had no alternative but to give the prosecution an opportunity to prove such separate acts. I therefore allowed the trial to proceed upon the three charges preferred. The accused was thereupon charged upon three charges. He pleaded guilty to the first of these three charges, but with regard to the other two he admitted that he was driving the vehicle at the time and place in question and that he had thus caused the deaths alleged but claimed that in law he could not properly be charged with these two charges. I interpreted this statement as a claim by the accused to be tried upon these two charges and the trial proceeded upon this basis. I recorded the accused's plea of guilty on the first charge, but did not record a conviction on this plea at this stage because I desired to leave the accused in a position to withdraw his plea of guilty in case an amendment to the charge should become necessary at the conclusion of the case for the prosecution.

It was agreed by Counsel on both sides that section 165 of the Criminal Procedure Code and section 70 of the Courts Ordinance are both subservient to section 71 of the Penal Code. To quote Gour on the equivalent sections of the Indian Law: "the combined effect of three sections is that while it is legal . . . . that the accused be tried for more than one offence . . . . in awarding punishment the provisions of this section shall be observed".

Counsel for the defence argued that section 71 applied particularly to offences in which intent played no part. Thus illustration (f) to section 165 of the Criminal Procedure Code of a person at one time criminally intimidating three persons and thereby committing three separate offences depends, in his submission, upon the fact that the offender had a criminal intention against each one of the three persons intimidated; so that the intention plus the act constitutes a separate offence against each victim. In a case of causing death by a rash act no question of intention arises so that if there is only one act there is only one offence. As was said by Lord Watson in *Cartro v. The Queen*[1] "the question as to what constitutes a separate offence where there has been a repetition of acts of the same character may at times involve questions of extreme nicety". I think the distinction suggested by Counsel for the defence between offences which involve intention and those

which do not is of some assistance in solving these questions. In the former class of case, one overt act may consist of two distinct offences if the offender had a double intention — i.e. an intention directed against separate persons. Each offence will thus consist of the act plus the separate intention. But when an act is an offence independently of any intention, then it seems that a person can only be punished once for his one act. If this distinction is borne in mind, many of the cases quoted in the text-books which appear at first sight to be inconsistent with each other become more intelligible.

It was argued by the Deputy Public Prosecutor that the basis of section 304A is unlawful killing, and that the offence is merely one aspect of culpable homicide as that phrase is used in common parlance. I do not think, however, that this argument is sound. Manslaughter by negligence in English law is distinguishable from other forms of manslaughter. This distinction is touched upon in the judgment of Lord Atkin in *Andrews v. Director of Public Prosecutions*[2] where he says after mentioning various forms of homicide: "in the present case it is only necessary to consider manslaughter from the point of view of an *unintentional killing* caused by negligence, that is, the omission of a duty to take care." (The italics are mine). The absence of intention to kill or, indeed, of any specific intention, is what distinguishes offences under section 304A from other forms of homicide. The result of this distinction is, in my opinion, that it is the rash or negligent act whch is the core of this offence and it is the death which fixes the punishment.

I do not think that any conclusion can be drawn from the fact that the punishment under this section is a maximum of two years' imprisonment or that it is the same as that under section 338. The punishments provided by sections 304 and 326 are also substantially the same (indeed section 326 adds a whipping) but this does not help one in distinguishing the two offences if death in fact ensues.

It was further argued that under section 304A if a man is to be liable for only one death in the course of an accident, however many deaths in fact ensue, the result would be that after the first death the offender would be free to go on and knock down and kill other persons with impunity. I do not think this is the result of the view that causing several deaths by one act is one offence. To drive on and kill others after having collided with one person may in some circumstances be in itself a rash or negligent act giving rise to further liability.

It is a time-honoured principle of English as it was of Roman Law that a man ought not be punished twice for the same offence. This principle is clearly laid down in the Interpretation and General Clauses Enactment, Section 27, and in the Interpretation Ordinance of the Straits Settlements, section 4 (g), both of which are based upon the English Interpretation Act, 1889, section 33, in so far as offences against different enactments or ordinances are concerned. Although it is not so clearly expressed, it is, in my opinion, the same principle which is enshrined in section 71 of the Penal Code.

I was in some doubt at first as to whether the words in section 71 "anything which is an offence" could be properly applied to a case of this kind as it was difficult to find an adequate description of the whole transaction made up of the causing of the deaths of the various victims. I came to the conclusion, however, that the "thing which is an offence" in such a case is the continuing rash act which caused loss of life. If it be conceded that the driving of a motor vehicle rashly over a stretch of some 60 yards of road starting from a moment when the vehicle enters this stretch of road at a high speed and ending at the moment when, having proceeded those 60 yards, it comes to a standstill is one rash act, then I think it can be said that that one act of rashness resulting in loss of life is made up of parts in that the causing of each death is a part of that one act which part is in itself an offence. Looked upon in this way such a state of affairs, though not quite the same as an assault consisting of a number of blows, comes very nearly within illustration (a) to section 71.

The only authority which appears to be really in point is a case the report of which unfortunately is not available. It is the case of *Emperor v. Bali Ram Nayappa*[3] and is quoted in Ratanlal (16th Ed. p. 114) and more fully in Starling's Indian Criminal Law (8th edition p. 63). In this case the prisoner having by one rash and negligent act committed at the same time and place caused the death of her two children, the High Court held that as there was only one act section 71 of the Penal Code applied and passed one sentence only.

In Ratanlal (16th Ed. p. 115) the citation of the case just mentioned is followed immediately by this passage :—

> II. A single transaction may give rise to either:—
> (1) several offences of a different character ....; or
> (2) several offences of the same character but affecting different persons, e.g. a single gun shot fired with criminal intent which injures two or more persons.

Each such offence is separately indictable and punishable. See sub-section (i) of section 235 and illustration (b) to section 71 and illustration (a), (f) and (g) to section 235.

Not only is this passage directly contradictory to what is said in the preceding sentence and to what is said at page 112 of the same text-book, but also it is not fully borne out by the sub-section and illustrations cited. No authority at all is quoted supporting the example of a single shot injuring two or more persons; illustration (b) to section 71 demonstrates a case where the offences are clearly so distinct that it does not assist us; illustration (a) to section 235 (our section 165 Criminal Procedure Code) is very similar; illustration (f) does not deal with an offence affecting different persons; and illustration (g) (equivalent to illustration (e) to our section 165) again does not deal with an offence affecting different persons. This passage seems to me to beg the whole question under discussion and affords no assistance in arriving at a decision in this case. I am unable to find any Indian authorities, except the one quoted above, which threw any light upon the present problem, and Counsel were unable to refer me to any.

It appears that in England where many deaths are caused in one accident the matter is treated as though there were only one offence. Since the hearing of the original argument my attention has been called to two English cases. *In R. v. Trainer*[4] the engine-driver and fireman of a railway train were indicted for the manslaughter of persons killed in a railway collision. The accused were indicted for feloniously killing and slaying five persons (named) on the 7th June, 1864. The decision in that case turned upon whether there was evidence of criminal negligence and the verdict returned was not guilty. It is clear, however, that the whole case was discussed on the basis of one offence. In another case *R. v. Benge*[5] the prisoners were indicted in respect of the deaths of various persons as a resu of a train running off the line. In spite of the fact, however, that there were various counts in the indictment, the case was again argued on the sole question whether the driver was or was not guilty of criminal negligence. One general verdict of guilty was returned.

I am unable to see any distinction in principle between the case of an engine-driver who, through a rash or negligent act, causes a railway accident resulting in the death of some 50 people and the case of a car driver who, through a rash or negligent act, causes the death of several persons on the highway in the course of one accident. It seems to me to be wholly against all the principles of the Common Law and of the Penal Code that a person who has thus caused a large number of deaths should be liable to as many punishments as there have been deaths, any more than that a man should be held liable to punishment for every blow which he inflicts in the course of an assault.

There is perhaps this distinction between a railway accident and a motor-car accident. In the case of a railway accident, once the collision ensues or the train leaves the rails as the case may be, the engine-driver usually loses all control of the situation and nothing more he can do can affect the final result. In the case of a motor-car accident, however, the driver is usually able either to stop immediately thus preventing further mischief, or is able to drive on after some collision or accident. The question of fact may therefore arise in the case of a motor-car accident involving the death or injury of several persons as to whether or not after the initial impact the driver was in a position, by taking proper steps, to bring his vehicle to rest and thus bring the accident to an immediate conclusion. If he has not done so, then his act in continuing to proceed after the initial accident may well be a second offence for which he should be separately punishable; or a second or later impact may be so separated in time and distance from the first as to constitute a separate transaction. If, however, the whole transaction can be looked upon as one single disaster such as a railway accident, then, in my view, the accused has committed but one act and is responsible only for that one act whether the act causes the death of one person or of more than one person.

Having heard the evidence, I am satisfied that all the deaths in this case were clearly caused in what any ordinary person would call one and the same accident, and the prosecution has failed to convince me that at any time after the first impact the accused committed any further act causing death which went beyond the rashness which caused this accident outside the two shop-houses so as to be separable from it and so constitute a new and separate act.

I have been asked to find as a fact whether or not there was more than one impact. I do not think this is possible. The only witness who described the events by the shop-houses in sequence is the proprietor of the Taj Mahal, and he describes the hitting of the rickshaw and the pedestrians in the order one would naturally take, i.e. the direction in which the lorry was moving. It would require a very keen and accurate observer to be able to say with certainty that the lorry actually contacted these people in a particular order — one would expect it to hit first the people who were nearest the town, but accidents do not always happen like that

and it is quite consistent with the evidence that different parts of the truck may have hit different objects either simultaneously or even in the unexpected order.

I can only say that, in my opinion, the impacts upon these various people must have been so nearly simultaneous as to be for all practical purposes one impact.

The whole transaction in Batu Road, which cannot have lasted more than a few seconds, can perhaps be divided into three parts — first the swerve to the right when an oncoming car was narrowly missed; next the swerve to the left when the trishaw and various persons were hit; and lastly, the second swerve to the right when the Standard car was hit. This collision with the Standard car might be said to be a separate accident but it is clear that all the deaths had already been caused by the act of accused in driving too close in to the left of the road whereby the trishaw and various people were hit.

I hold, therefore, that the two deaths now under consideration were caused by one rash act of the accused and that he has committed only one offence.

In order, therefore, to dispose finally of this case I shall amend the charge so as to include the names of all the six people killed in this accident and will re-charge the accused upon this amended charge.

Charge Amended.